

REMARKS

This Response is submitted in reply to the Advisory Action of March 1, 2006. A Request for Continued Examination is submitted herewith. The Commissioner is authorized to charge deposit account number 02-1818 for any fees which are due and owing. Claims 1-16 and 23-25 are pending in the present application. Claims 26-28 are added by this response. No new matter is introduced by these amendments.

Prompt and favorable action is respectfully solicited.

Double Patenting Rejections

Claims 1-9 were rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-5 of U.S. Patent No. 6,217,571 to Peyman; claims 1-14 of U.S. Patent No. 6,221,067 to Peyman; claims 1-31 of U.S. Patent No. 6,264,648 to Peyman; claims 1-11 of U.S. Patent No. 6,203,538 to Peyman; and claims 1-15 of U.S. Patent No. 5,722,971 to Peyman.

Additionally, claims 10-16 and 23-25 were rejected over each of these patents in view of U.S. Patent No. 4,729,372 to L'Esperance, Jr.

With regard to the '067 Peyman patent, the '571 Peyman patent, 'the '538 Peyman patent and the '971 Peyman patent, a terminal disclaimer for each of these patents was filed to overcome these rejections on February 16, 2006. However, the Advisory Action merely states that these terminal disclaimers "...have been forwarded to the Special Programs area for evaluation." It is respectfully submitted that these terminal disclaimers overcome the double patenting rejections based on these patents. Therefore, it is respectfully requested that the rejections based on these patents be withdrawn.

Applicant will now turn to the rejection based on the '648 Peyman patent. The Advisory Action contends that claims 1-9 are obvious in view of this patent. Applicant respectfully disagrees.

Independent claim 1 recites, among other things, forming a corneal flap, a portion of which remains attached to the cornea by an area located at the main optical axis and the flap having a peripheral edge that forms an arc at least partly around the main optical axis, the peripheral edge being movable relative to the second surface. The '648 Peyman patent does not disclose, teach or suggest such a flap.

The '648 patent discloses various methods of accessing the tissue beneath the surface of the cornea to alter the refractive properties of the eye. For example, the '648 patent discloses removing a thin layer 18 from the center part of a patient's live cornea (see Fig. 2, and col. 5, lines 65-7), creating an intrastromal pocket to flatten the central portion of the cornea (see Figs. 19-27, and cols. 8-9, lines 56-5), and forming intrastromal incisions or tunnels (see Figs. 28-36, col. 10, lines 1-14 and 55-67).

It is respectfully submitted that there is no disclosure or suggestion in the '648 patent of forming a corneal flap, a portion of which remains attached to the cornea by an area located at the main optical axis. Additionally, there is no disclosure or suggestion of a peripheral edge of a corneal flap forming an arc at least partly around the main optical axis, the peripheral edge being movable relative to the second surface (e.g., the exposed cornea).

The Advisory Action states that the disclosure of this application teaches that "...flaps can take many forms (see figures 62-68 and 86-88), thus the linear incisions with small openings in 6,264,648 fall within the definition of a "flap" as inferred from the instant disclosure." Applicant respectfully disagrees. The discussion of Figs. 62-68 does not mention a corneal flap. Instead, the figures are discussed as showing a pocket, and it is not necessary to form a flap to form a pocket. Figures 86-88 show different numbers and configurations of corneal flaps. However, the peripheral edge of these flaps form arcs at least partly around the main optical axis and are movable relative to the exposed cornea. It is respectfully submitted that tissue covering the pocket formed in the '648 patent is not a corneal flap. However, even if it was interpreted to be a corneal flap, it is respectfully submitted the tissue would be a flap without a peripheral edge that forms an arc at least partly around the main optical axis and is movable relative to the second surface.

Moreover, the L'Esperance patent does not overcome the deficiencies of the '648 patent. The L'Esperance patent discloses a method of ablating the cornea. The L'Esperance method ablates the surface of the cornea and does not form a flap of any kind, let alone a corneal flap having a portion which remains attached to the cornea by an area located at the main optical axis or having a peripheral edge that forms an arc at least partly around the main optical axis, the peripheral edge being movable relative to the second surface.

Further, with respect to Claim 26, neither the '648 patent nor L'Esperance discloses or suggests that the peripheral edge of the corneal flap forms a substantially three hundred sixty degree arc around the main optical axis.

For at least the above reasons, Applicant respectfully submits that independent claim 1 and its dependent claims 2-12 and 26-28 are allowable over each of these patents alone or in combination.

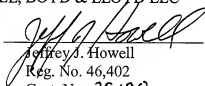
Independent claims 13 and 23 and their respective dependent claims are allowable for similar reasons as those discussed for independent claim 1. That is, each of these claims recites a flap having a portion which remains attached to the cornea by an area located at the main optical axis, and a peripheral edge that forms an arc at least partly around the main optical axis, the peripheral edge being movable relative to the second surface. These elements are not disclosed taught or suggested by either the '648 patent or the L'Esperance patent.

In view of the foregoing comments and amendments, it is believed that the above-identified application is in condition for allowance, and notice to that effect is respectfully requested. Should the Examiner have any questions, the Examiner is encouraged to contact the undersigned at the number indicated below.

Respectfully submitted,

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